

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 22, 2009

- D055172 Birjandi v. The Superior Court of San Diego County/Vance**
The petition is denied.
- D047681 People v. Millard**
D049268 People v. Millard
(Consolidated) The judgment is affirmed. The restitution order is reversed to the extent it awarded attorney fees and costs. In all other respects, the order is affirmed. The matter is remanded to the trial court for further proceedings consistent with this opinion.
CERTIFIED FOR PARTIAL PUBLICATION.
McDonald, J.; We Concur: Haller, Acting P.J., Irion, J.
- D052605 People v. Davis**
The judgment and sentence of the trial court are affirmed.
Aaron, J.; We Concur: Huffman, Acting P.J., Irion, J.
- D055106 Marriage of Swanson**
Pursuant to California Rules of Court, rule 8.140, the appeal filed on May 8, 2009, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).
- D053545 In re Julio Cesar R., a Juvenile**
The judgment is affirmed. Huffman, Acting P.J.; We Concur: O'Rourke, J., Irion, J.
- D055046 J. M. et al. v. Superior Court of San Diego County/S.D. County Health & Human Services Agency**
The attorney for petitioner E. G. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.
- D052815 People v. Simmons**
The judgment is affirmed. Huffman, Acting P.J.; We Concur: McIntyre, J., Irion, J.
- D055198 G.P. v. Superior Court of San Diego County/S.D. County Health & Human Services Agency**
The attorney for petitioner G. P. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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June 23, 2009

D053216 Pacific Specialty Insurance Company v. Erickson

On April 13, 2009, appellant notified this court that the matter settled. The court accepted the notice of settlement and advised appellant to request dismissal within 45 days. On June 4, 2009, the court granted appellant's request for a 15 day extension of time to file the request for dismissal. Because appellant has not filed a timely request to dismiss or a letter stating good cause why the appeal should not be dismissed in accordance with California Rule of Court, rule 8.244, subdivision (a)(3), the court orders the appeal dismissed and each side to bear its own costs on appeal. (Cal. Rules of Court, rule 8.244(a)(4).)

D054748 People v. Rocha

The judgment is affirmed.
Huffman, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D055307 In re Williams on Habeas Corpus

The petition is denied.

D055317 In re Arriaga on Habeas Corpus

The petition is denied.

D054828 Pronovost v. Superior Court of San Diego County/Aurora Loan Services, Inc., et al.

The petition is denied.

D055174 In re Williams on Habeas Corpus

The request for rehearing filed June 17, 2009, has been read and considered by Justices Benke, Huffman and Irion.

The denial of a petition for a writ within the appellate court's original jurisdiction without issuance of an alternative writ or order to show cause is final immediately. (Cal. Rules of Court, rule 8.387(b)(2)(A).) The petition for writ of habeas corpus was summarily denied on May 29, 2009. This court is without jurisdiction to rehear the matter.

The clerk is directed to retain one copy of the request for rehearing for our records and return the original and all other copies to petitioner.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 23, 2009 (Continued)

D053145 People v. Ziemann

The judgment is reversed in part and remanded for the trial court to impose sentence on or strike Ziemann's three prison priors. In all other respects, the judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.

D054666 People v. Jamal

Judgment affirmed. Irion, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D054603 In re White on Habeas Corpus

The petition is denied.

D054724 In re McFee on Habeas Corpus

The petition is denied.

D054512 In re Willmore on Habeas Corpus

The petition is denied.

D054143 In re Alyssa K., a Juvenile

The appeal is dismissed.

McDonald, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D053556 Abdou v. County of San Diego

The judgment is affirmed. County is entitled to costs on appeal.

McDonald, J.; We Concur: Huffman, Acting P.J., Irion, J.

D054919 In re Braden F., a Juvenile

The appeal is dismissed. O'Rourke, J.; We Concur: Benke, Acting P.J., Nares, J.

Court convened at 11:01 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and
 The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: M. Hubbard

D053678 New Century Corporation v. Positive Investments, Inc.

Cause called on merits. James T. Grant, Esq. argued for appellant.

Lori E. Eropkin, Esq. argued for respondent/cross-appellant. Mr. Grant replied.
Cause submitted.

Court adjourned at 11:30 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

June 23, 2009 (Continued)

- D055306 In re Williams on Habeas Corpus**
The petition is denied.
- D055315 In re Johnson on Habeas Corpus**
The petition is denied without prejudice to refile in San Diego County Superior Court.
- D054916 In re C.M., a Juvenile**
Upon written request filed by appellant F. M., his appeal is dismissed and the remittitur is ordered to issue immediately as to F. M. only (Cal. Rules of Court, rule 8.316(a), (b)(1)).
- D055326 San Diego Municipal Employees Association v. Superior Court of San Diego County/City of San Diego et al.**
The petition is denied.
- D053971 Graczyk v. Housing Authority for the County of San Diego**
Michael's motion to substitute is denied. The appeal is dismissed. This court's October 29, 2008 stay of the eviction order in the unlawful detainer action shall be vacated as moot upon issuance of the remittitur. This court's November 17, 2008 writ of supersedeas shall be dissolved as moot upon issuance of the remittitur.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
June 24, 2009

D053524 Kennedy et al. v. Cummings et al.

The trial court's order denying plaintiffs' JNOV is affirmed; however, the order denying the plaintiffs' motion for a new trial is reversed and remanded with instructions that it be granted. Plaintiffs to recover their costs of appeal.
Benke, J.; We Concur: McConnell, P.J., Nares, J.

D053993 People v. Neri

The judgment is affirmed. Haller, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D053553 Costa Serena Owners Coalition v. Costa Serena Architectural Committee

On the court's own motion, the above-entitled appeal is consolidated with the pending appeal, *Costa Serena Owners Coalition v. Costa Serena Architectural Committee*, D052903/D053159, for disposition.

D053259 In re Juan Y., a Juvenile

The matter is remanded to the juvenile court to strike four of the five counts of reckless driving causing specific bodily injuries (Veh. Code, § 23105, subd. (a)). Counts 2 through 5 are to be stricken, and the court shall modify the maximum period of confinement accordingly. The court is also ordered to strike Nos. 24 and 25 of the probation conditions. Additionally, the court is ordered to exercise its discretion and declare whether the vehicular manslaughter count and the reckless driving causing specific bodily injuries are felonies or misdemeanors. In all other respects, the judgment is affirmed.
Irion, J.; We Concur: McConnell, P.J., McDonald, J.

D054145 In re Ashton B., a Juvenile

The order is affirmed. Benke, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D052903 Costa Serena Owners Coalition v. Costa Serena Architectural Committee et al.

D053159 Costa Serena Owners Coalition v. Costa Serena Architectural Committee et al.

D053553 Costa Serena Owners Coalition v. Costa Serena Architectural Committee et al.
(Consolidated) The judgment of the trial court is reversed. The case is remanded to the trial court with instructions to enter judgment in favor of the Architectural Committee. Jess Diaz's appeal from the denial of his motion to vacate, and the Coalition's appeal from the denial of its motion for attorney fees, are dismissed. The Architectural Committee is entitled to costs on appeal for both its appeal and its opposition to the Coalition's appeal. Diaz is to bear his own costs on appeal.
Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

June 24, 2009 (Continued)

- D053592 People v. Brooks**
The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Irion, J.
- D054072 People v. Williams**
The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., McIntyre, J.
- D050656 Resnik v. Roberts**
The judgment and the order denying Resnik's request for attorney fees are affirmed.
Each party is to bear his own costs of appeal.
McIntyre, J.; We Concur: Benke, Acting P.J., Nares, J.
- D053099 People v. Sanchez**
The petition for rehearing is granted.
- D055345 People v. Cunningham**
The appeal filed on May 15, 2009, seeks review of a decision by the Appellate Division, Superior Court for the County of San Diego. The case was not certified by the Appellate Division and appellant has not applied for and obtained transfer. (Cal. Rules of Court, rule 8.1000 et. seq.) The appeal is dismissed.
- D054263 People v. Kirkendall, Jr.**
Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.
(Cal. Rules of Court, rule 8.316.)
- D055128 Thomas v. Kolender**
Because appellant did not timely pay the filing fee, the appeal is dismissed.
(Cal. Rules of Court, rule 8.100(c)(3).)

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June 25, 2009

- D054859 In re Fabian Z., a Juvenile**
The appeal is dismissed. Nares, Acting P.J.; We Concur: McDonald, J., Irion, J.
- D052871 In re Marriage of Krzywiec**
The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., McIntyre, J.
- D052691 People v. Lopez**
The judgment is affirmed.
Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.
- D055182 San Diego Country Estates Association, Inc. v. Ward**
Because appellant did not timely pay the filing fee, the appeal is dismissed.
- D054796 Maria M. v. Superior Court of San Diego County/San Diego County Health
 and Human Services Agency**
The petition is denied. The request for stay is denied.
McDonald, Acting P.J.; We Concur: O'Rourke, J., Irion, J.
- D055180 M.W. v. Superior Court of San Diego County/San Diego County Health and
 Human Services Agency**
No timely petition for writ relief has been filed. The notice of intent is deemed to
be abandoned. The case is dismissed.
- D054814 In re Morales on Habeas Corpus**
The petition is denied.
- D054696 In re Barboza on Habeas Corpus**
The petition is denied.
- D054727 Infanzon v. Cardenaz**
The petition for writ of supersedeas, response and request for stay have been read
and considered by Justices Benke, McIntyre and Irion. The petition is denied.
- D055041 In re Bowling on Habeas Corpus**
The petition is denied.
- D054812 In re Pierce on Habeas Corpus**
The petition is denied.

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June 25, 2009 (Continued)

D054577 Tatjuk v. Evans

The file has been read and considered by Justices Benke, McDonald and Irion. The record on appeal in this matter was filed on April 28, 2009, and the court advised appellant his opening brief was due within 30 days. On May 14, 2008, the court returned appellant's opening brief unfiled because it was not properly served. The court granted appellant until June 8, 2009, to file and serve the opening brief. On June 11, 2009, the court returned appellant's opening brief unfiled a second time for lack of proper service. The court advised appellant if he did not properly file and serve the opening brief by June 17, 2009, the appeal would be dismissed. Appellant submitted an opening brief on June 23, 2009, without service on respondent. Because appellant has failed to comply with California Rules of Court, rules 8.25 (a) & 8.200 (a)(1), and this court's June 11, 2009, order, the appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 26, 2009

D052523 Davis v. Wright

Respondent's motion to dismiss the appeal and the record on appeal have been read and considered by Justices Benke, McDonald and Irion. No opposition was filed by appellant. The motion to dismiss is granted. The appeal filed on February 14, 2008, is dismissed.